

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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<i>In re</i>	:	Chapter 11 Case No.
	:	
ARMSTRONG WORLD INDUSTRIES,	:	00-4471 (JKF)
INC., <i>et al.</i> ,	:	
	:	(Jointly Administered)
Debtors.	:	
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	:	
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**SETTLEMENT AGREEMENT**

WHEREAS, Armstrong World Industries, Inc. ("AWI" or "Debtor") filed with the United States Bankruptcy Court for the District of Delaware (the "Court") a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") on December 6, 2000 (the "Petition Date"), Case No. 00-4471 (JKF) (the "Chapter 11 Case");

WHEREAS the United States, on behalf of the United States Environmental Protection Agency ("EPA"), contends that AWI is liable for response costs incurred and to be incurred by EPA in the course of responding to releases and threats of releases of hazardous substances into the environment for the Liquidated Sites as set forth herein;

WHEREAS AWI disputes the United States' contentions;

WHEREAS certain potentially responsible parties implementing response action at the Liquidated Sites as set forth herein have asserted claims for contribution for response costs from AWI;

WHEREAS the United States has filed a Proof of Claim on behalf of EPA against AWI's estate (Claim no. 4724) seeking Claims in an unliquidated amount;

WHEREAS AWI seeks, to the maximum extent permitted by law, to obtain protection, through the resolution of environmental liabilities for the Liquidated Sites as set forth herein, from and against all Claims that have been or may in the future be asserted for response costs for the Liquidated Sites;

WHEREAS AWI and the United States, on behalf of EPA, wish to resolve their differences with respect to the Liquidated Sites and deal with other issues relating to environmental matters as provided herein;

WHEREAS in consideration of, and in exchange for, the promises and covenants herein, including, without limitation, the covenants not to sue set forth in Paragraphs 17, 19, and 23 and, subject to the provisions of Paragraphs 27-29, intending to be legally bound hereby, AWI and the United States, on behalf of EPA, hereby agree to the terms and provisions of this Settlement Agreement;

WHEREAS settlement of the matters governed by this Settlement Agreement is in the public interest and an appropriate means of resolving these matters;

NOW, THEREFORE, without the admission of liability or any adjudication on any issue of fact or law, and upon the consent and agreement of the parties to this Settlement Agreement by their attorneys and authorized officials, it is hereby agreed as follows:

## **DEFINITIONS**

1. In this Agreement, the following terms shall have the following meanings:

A. "Additional Sites" means all sites, including, without limitation, all facilities, as that term is defined in CERCLA, other than the Liquidated Sites, Discharged Sites, the Consent Decree Site, and the AWI-Owned Sites. An "Additional Site" shall be construed to include (i) for those sites now or hereafter included on the NPL, all areas of a site as defined by

EPA for purposes of the NPL, including any later expansion of such site as may be determined by EPA, and (ii) for those sites not included on the NPL, all areas affected or potentially affected by the release or threatened release of hazardous substances, as a direct or indirect result of the operations or activities occurring on that site which gave rise to the release or threatened release.

B. "Allowed Unsecured Claim" shall have the meaning set forth in the Plan of Reorganization.

C. "AWI" refers to Armstrong World Industries, Inc., a Pennsylvania Corporation, as debtor and debtor in possession.

D. "AWI-Owned Sites" means any properties or sites owned by AWI at or at any time after the confirmation of the Plan of Reorganization.

E. "Bankruptcy Code" means title 11 of the United States Code.

F. "CERCLA" refers to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq., as now in effect or hereafter amended.

G. "Claim" has the meaning provided in Section 101(5) of the Bankruptcy Code, 11 U.S.C. § 101(5). Where the word "claim" is used without capitalization, it shall refer to a demand for any form of legal relief and is not limited by the definition in Section 101(5) of the Bankruptcy Code.

H. "Consent Decree Site" means the Malvern TCE site in Malvern, Pennsylvania, which is the subject of the Consent Decree in United States et al. v. Chemclene et al., no. 99-CV-3715 (E.D. Pa. Dec. 13, 1999) in which the United States and AWI are both parties.

I. "Debtor" shall mean AWI, as debtor, debtor in possession or as reorganized under a Plan of Reorganization.

J. "Discharged Sites" means the following 18 sites (in alphabetical order):

1. Applied Environmental Services (Glenwood Landing, New York);
2. Aqua-Tech Environmental, Inc. (Groce Labs) (Greer, South Carolina);
3. Berk's Landfill (Denver, Pennsylvania);
4. Beulah Landfill (Pensacola, Escambia County, Florida);
5. Carolina Steel Drum (Rock Hill, York County, South Carolina);
6. Central Steel Drum (Newark, New Jersey);
7. Chem Science (Germantown, Wisconsin);
8. Davis GSR Landfill (Smithfield and Gloucester, Rhode Island);
9. Dorney Road Landfill a/k/a Oswald (Upper Macungie Township, Pennsylvania);
10. Frontier Chemical (Niagara Falls, New York);
11. Gallups Quarry (Plainfield, Connecticut);
12. Lancaster Battery (Lancaster, Lancaster County, Pennsylvania);
13. Lorentz Barrel & Drum Co. (San Jose, California);
14. Miami Munisport Landfill (North Miami, Dade County, Florida);
15. Modern Sanitation Landfill (Lower Windsor Township, Pennsylvania);
16. North Penn – Area 6 (Lansdale, Pennsylvania);
17. Peach Metals Industry (Peach, Georgia); and
18. Pemaco Maywood (Maywood, California).

A “Discharged Site” delineated above shall be construed to include (i) for those sites now or hereafter included on the NPL, all areas of a site as defined by EPA for purposes of the NPL, including any later expansion of such site as may be determined by EPA, or (ii) for those sites not included on the NPL, all areas affected or potentially affected by the release or

threatened release of hazardous substances, as a direct or indirect result of the operations or activities occurring on or in the vicinity of that site which gave rise to the release or threatened release.

K. "Effective Date" means the date on which this Settlement Agreement is approved by the Bankruptcy Court.

L. "EPA" means the United States Environmental Protection Agency or any legal successor thereto.

M. "EPA Proof of Claim" means Proof of Claim no. 4724 filed in the Chapter 11 Case.

N. "Excess Insurance Proceeds" means, with respect to any Insurance Site, the amount of insurance proceeds recovered by AWI with respect to such Insurance Site in excess of the total of AWI's costs of pursuing such insurance proceeds.

O. "Insurance Sites" means the following six Liquidated Sites: Galaxy/Spectron; Lone Pine Landfill; Maryland Sand, Gravel & Stone; Operating Industries; Peterson/Puritan; and Solvents Recovery Service of New England.

P. "Liquidated Sites" means the following 19 sites:

1. American Chemical Service, Inc. (Griffith, Indiana);
2. Angelillo (Southington, Connecticut);
3. Calumet Container (Hammond, Indiana);
4. Casmalia Disposal (Santa Barbara, California);
5. Elizabethtown Landfill (Elizabethtown, Pennsylvania);
6. Galaxy/Spectron (Elkton, Maryland);
7. Helen Kramer Landfill (Mantua, New Jersey);

8. Ottati & Goss/Kingston Steel Drum (Kingston, New Hampshire);
9. Lone Pine Landfill (Freehold Township, New Jersey);
10. Lang Property (Pemberton Township, New Jersey);
11. Maryland Sand, Gravel & Stone (Elkton, Maryland);
12. Omega Chemical Corporation (Whittier, California);
13. Operating Industries, Inc. Landfill (Monterey Park, California);
14. Peterson/Puritan (Lincoln/Cumberland, Rhode Island);
15. Picillo Farm (Coventry, Rhode Island);
16. Quanta Resources Superfund Site (Syracuse, New York);
17. Scientific Chemical Processing Carlstadt (Carlstadt, New Jersey);
18. Solvents Recovery Service of New England (Southington, Connecticut); and
19. Volney Municipal Landfill (Town of Volney, New York).

A "Liquidated Site" delineated above shall be construed to include (i) for those sites now or hereafter included on the NPL, all areas of a site as defined by EPA for purposes of the NPL, including any later expansion of such site as may be determined by EPA, or (ii) for those sites not included on the NPL, all areas affected or potentially affected by the release or threatened release of hazardous substances, as a direct or indirect result of the operations or activities occurring on or in the vicinity of that site which gave rise to the release or threatened release.

Q. "Malvern Consent Decree" means the Consent Decree in United States et al. v. Chemclene et al., no. 99-CV-3715 (E.D. Pa. Dec. 13, 1999) with respect to the Malvern TCE Site in Malvern, Pennsylvania in which the United States and AWI are both parties.

R. "NPL" means the National Priorities List, 40 C.F.R. Part 300.

S. "Plan of Reorganization" or "Plan" means any plan of reorganization that is confirmed and becomes effective in the Chapter 11 Case of AWI.

T. "Prepetition" refers to the time period on or prior to December 6, 2000. "Postpetition" refers to the time period from and after December 6, 2000 and prior to the Effective Date.

U. "RCRA" refers to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as now in effect or hereafter amended.

V. "United States" means the United States of America, including EPA, and all of the United States agencies, departments and instrumentalities.

### **JURISDICTION**

2. The Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. § 157, 1331, and 1334; and 42 U.S.C. § 9607 and 9613(b).

### **PARTIES BOUND SUCCESSION AND ASSIGNMENT**

3. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the United States, AWI and AWI's legal successors and assigns, and any trustee, examiner or receiver for AWI appointed in the Chapter 11 Case.

### **ALLOWANCE OF CLAIMS**

4. In settlement and satisfaction of the United States' CERCLA Claims on behalf of EPA with respect to the Liquidated Sites, AWI consents to the United States having the Allowed Unsecured Claims on behalf of EPA in the amounts set forth below. EPA shall receive no distributions from AWI in the Chapter 11 Case with respect to AWI's liabilities and obligations under CERCLA for the Liquidated Sites other than as set forth in this Settlement Agreement. If

no amount of Allowed Unsecured Claim is listed below for a particular Liquidated Site, then the amount of the Allowed Unsecured Claim for that Liquidated Site is zero:

A. With respect to the American Chemical Service, Inc. site located in Griffith, Indiana: AWI previously paid \$963 toward the response costs, and the United States on behalf of EPA shall have an Allowed Unsecured Claim of \$0.

B. With respect to the Angelillo site located in Southington, Connecticut: the United States on behalf of EPA shall have an Allowed Unsecured Claim of \$1,000.00.

C. With respect to Calumet Container site located in Hammond, Indiana: the United States on behalf of EPA shall have an Allowed Unsecured Claim of \$23,000.00.

D. With respect to the Casmalia Disposal site located in Santa Barbara, California: the United States on behalf of EPA shall have an Allowed Unsecured Claim of \$70,569.00.

E. With respect to the Elizabethtown Landfill site located in Elizabethtown, Pennsylvania: AWI previously paid \$146,000.00 toward response costs, and the United States on behalf of EPA shall have an Allowed Unsecured Claim of \$0.

F. With respect to the Galaxy/Spectron site located in Elkton, Maryland: the United States on behalf of EPA shall have an Allowed Unsecured Claim of \$267,000.00.

G. With respect to the Helen Kramer Landfill site in Mantua, New Jersey: the United States on behalf of EPA shall have an Allowed Unsecured Claim of \$1,000.00.

H. With respect to the Ottati & Goss site in Kingston, New Hampshire: AWI previously entered into a de minimis settlement with the United States on behalf of EPA and received a covenant not to sue; accordingly, the parties agree that EPA shall have an Allowed Unsecured Claim of \$0.



I. With respect to the Lone Pine Landfill site located in Freehold, New Jersey: the United States on behalf of EPA shall have an Allowed Unsecured Claim of \$134,256.00.

J. With respect to the Lang Property site located in Pemberton Township, New Jersey: the United States on behalf of EPA shall have an Allowed Unsecured Claim of \$1,000.00.

K. With respect to the Maryland Sand, Gravel & Stone site located in Elkton, Maryland, the United States on behalf of EPA shall have an Allowed Unsecured Claim of \$185,430.00.

L. With respect to the Omega Chemical Corporation site located in Whittier, California: the United States on behalf of EPA shall have an Allowed Unsecured Claim of \$24,000.00.

M. With respect to the Operating Industries Landfill site located in Monterey Park, California: the United States on behalf of EPA shall have an Allowed Unsecured Claim of \$192,208.80.

N. With respect to the Peterson/Puritan Site in Lincoln/Cumberland, Rhode Island: the United States on behalf of EPA shall have an Allowed Unsecured Claim of \$7,780,000.00.

O. With respect to the Picillo Farm site in Coventry, Rhode Island: the United States on behalf of EPA shall have an Allowed Unsecured Claim of \$1,000.00.

P. With respect to the Quanta Resources Superfund site in Syracuse, New York: the United States on behalf of EPA shall have an Allowed Unsecured Claim of \$1,000.00.

Q. With respect to the Scientific Chemical Processing Carlstadt site located in Carlstadt, New Jersey: the United States on behalf of EPA shall have an Allowed Unsecured Claim of \$1,000.00.

R. With respect to the Solvents Recovery Service of New England site located in Southington, Connecticut: the United States on behalf of EPA shall have an Allowed Unsecured Claim of \$44,275.00.

S. With respect to the Volney Municipal Landfill site located in Town of Volney, New York: the United States on behalf of EPA shall have an Allowed Unsecured Claim of \$1,000.00.

Summary of Total Allowed Unsecured Claims Under Paragraph 4: The United States on behalf of EPA shall have Allowed Unsecured Claims in the total amount of \$8,727,738.80 against AWI. Upon this Settlement Agreement becoming effective, the EPA Proof of Claim shall be deemed amended to assert a Claim in the amount of \$8,727,738.80.

5. With respect to the Liquidated Sites:

A. With respect to the Allowed Unsecured Claims set forth in Paragraph 4 for EPA, only the amount of cash received by EPA (and net cash received by EPA on account of any non-cash distributions) from AWI's estate under the Plan of Reorganization for the Allowed Unsecured Claim for a particular site, and not the total amount of the Allowed Unsecured Claim, shall be credited by EPA to its account for a particular site, which credit shall reduce the liability of non-settling potentially responsible parties for the particular site by the amount of the credit.

B. The Claims and payments set forth in Paragraph 4 will be deemed allocated towards all past, present and future claims for the Liquidated Sites, whether to address matters known or unknown, for which a claim of any kind or nature has been or could be asserted against AWI pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, or Section 7003 of RCRA, 42 U.S.C. § 6973, by EPA, or the United States on behalf of EPA, or by the potentially responsible parties or potentially responsible party groups which have incurred or may incur such costs.

C. To the extent that the distributions made under the Plan with respect to any of the Insurance Sites do not satisfy the entire amount of the United States' Allowed Unsecured Claim on behalf of EPA with respect to such site, the United States shall retain all rights on behalf of

EPA that it may have to bring a direct action against any of AWI's insurers for the unsatisfied amount of the Allowed Unsecured Claim, except that the United States shall not be entitled to participate on behalf of EPA in any Excess Insurance Proceeds recovered by AWI from an insurer of AWI unless the United States agrees to waive on behalf of EPA all such rights of direct action against such insurer. Such waiver shall only extend to those direct action rights which the United States may have against such insurer in its capacity as an insurer of AWI and would not include any direct action rights which the United States may have on behalf of EPA against them as insurers of any other party, or any claims that the United States may have on behalf of EPA against them because of said insurers' own conduct.

D. To the extent that at any time after the Petition Date, AWI recovers insurance proceeds from an insurer on account of any of the Insurance Sites in excess of AWI's costs of pursuing such insurance proceeds, AWI may retain 52% of such Excess Insurance Proceeds on account of any Insurance Site and AWI shall pay 48% of such Excess Insurance Proceeds on account of each Insurance Site to the United States only upon the United States' execution on behalf of EPA of the waiver provided for in Paragraph 5.C. above for such insurer. AWI agrees to allocate in writing all insurance proceeds on a fair and equitable basis among the various Insurance Sites and other sites, based upon all of the facts and circumstances, including but not limited to any positions and/or defenses to coverage asserted by insurers, and with deference to any allocation by a court or in an approved settlement document. In determining AWI's cost of pursuing insurance proceeds for any Insurance Site, AWI shall use the same percentage allocation of costs as is used in AWI's allocation of recovery of insurance proceeds attributed to that Insurance Site. Notwithstanding anything herein to the contrary, to the extent that insurance proceeds are allocable to sites other than the Insurance Sites or claims unrelated to the Insurance

Sites, no payment shall be made to the United States from those insurance proceeds. The United States reserves the right to petition the Court on behalf of EPA for an adjustment of AWI's allocation based upon all of the facts and circumstances. The payments required to be made under this subparagraph shall be in addition to the payments required to be made under Paragraphs 4 and 5. However, under no circumstances, may the payments required to be made under this subparagraph, when combined with the consideration received for any Insurance Site under Paragraphs 4 and 5, exceed the amount of the Allowed Unsecured Claim for that Insurance Site under Paragraph 4 of this Settlement Agreement. With respect to any payments received by the United States under this subparagraph, EPA shall credit site accounts for particular Insurance Sites only in accordance with AWI's allocation for the particular Insurance Site (unless adjusted by the Court), which credit shall reduce the liability of non-settling potentially responsible parties for the particular site by the amount of the credit.

#### **CONSENT DECREE SITE**

6. AWI is a party to the Malvern Consent Decree. Notwithstanding any other provisions of this Settlement Agreement, including, but not limited to Paragraphs 4 and 5 (Liquidated Sites), Paragraphs 8-10 (Additional Sites), and Paragraph 17, AWI shall comply with all of its obligations under the Malvern Consent Decree and AWI's obligations under the Malvern Consent Decree shall not be impaired in any way by the Chapter 11 Case, confirmation of the Plan of Reorganization, or this Settlement Agreement. In addition, AWI has entered into certain agreements with other parties to perform work required under the Malvern Consent Decree and to perform and pay for response actions at the Malvern TCE Site in Malvern, Pennsylvania. To the extent that any of AWI's agreements to comply with such obligations, perform work, and perform or pay for response actions at the Malvern TCE Site may be construed as executory

contracts under Section 365 of the Bankruptcy Code, AWI shall be deemed to have assumed the agreements under Section 365(a) of the Bankruptcy Code.

**NON-DISCHARGEABILITY/DEBTOR-OWNED SITES/  
RESERVATION OF RIGHTS**

7. The following Claims of or obligations to the United States shall not be discharged under Section 1141 of the Bankruptcy Code by the confirmation of a Plan of Reorganization nor shall such Claims or obligations be impaired or affected in any way by the Chapter 11 Case or confirmation of a Plan of Reorganization:

A. With respect to any AWI-Owned Sites:

(i) Claims against AWI by the United States under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of response costs incurred Postpetition with respect to response action taken by EPA at an AWI-Owned Site, including such response action taken to address hazardous substances that have migrated from an AWI-Owned Site to a proximate location;

(ii) Actions against AWI by the United States under CERCLA or RCRA seeking to compel the performance of a removal action, remedial action, corrective action, closure or any other cleanup action by or on behalf of EPA at an AWI-Owned Site, including actions to address hazardous substances that have migrated to a proximate location from an AWI-Owned Site; or

(iii) Claims against AWI by the United States on behalf of EPA for recovery of civil penalties for violations of law resulting from Postpetition conduct of AWI at AWI-Owned Sites.

B. With respect to any Additional Site, claims against AWI by the United States on behalf of EPA under Sections 106 and 107(a)(1)-(4) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a)(1)-(4), arising as a result of AWI's Postpetition conduct which would give rise to liability under 42 U.S.C. §§ 9606 and 9607(a)(1)-(4).

C. With respect to any Liquidated Site or Discharged Site, the parties reserve all rights and defenses they may have with respect to Postpetition conduct of AWI occurring after the date of lodging of this Settlement Agreement which would give rise to liability under 42 U.S.C. §§ 9606 and 9607(a)(1)-(4). Nothing in this Settlement Agreement shall affect or limit such rights and defenses.

D. EPA, or the United States on behalf of EPA, may pursue enforcement actions or proceedings under applicable law with respect to their claims against AWI and any obligations of AWI to the United States or EPA, under the foregoing subparagraphs A through C in the manner, and by the administrative or judicial tribunals, in which the United States or EPA could have pursued enforcement actions or proceedings if the Chapter 11 Case had never been commenced. AWI reserves the right to assert any and all defenses and counterclaims available to it under applicable law with respect to any such claims and any such obligations of AWI to EPA or the United States under subparagraphs A through C that are asserted by the United States except for any alleged defense of discharge of liabilities provided under the Bankruptcy Code, any Plan of Reorganization or order of confirmation. The United States reserves all of its rights with respect to any defenses or counterclaims asserted by AWI under this subparagraph D.

E. As used in subparagraphs 7B and 7C, "Postpetition conduct" shall not include a failure to satisfy or comply with any Prepetition liability or obligation or with any order issued by EPA Postpetition but concerning acts or omissions occurring Prepetition, or to pay a Claim (including, without limitation, a penalty Claim) except as required by or resulting from the terms of the Plan of Reorganization, Paragraph 6 or any other provision of this Settlement Agreement, or a final order of the Court confirming a Plan of Reorganization.

## TREATMENT OF ADDITIONAL SITES

8. With respect to all Additional Sites, all liabilities and obligations of AWI to EPA, or to the United States on behalf of EPA, under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607 and Section 7003 of RCRA, 42 U.S.C. § 6973, arising from Prepetition acts, omissions or conduct of AWI or its predecessors, including without limitation, the Prepetition generation, transportation, disposal or release of hazardous substances, wastes or materials or the Prepetition ownership or operation of hazardous waste facilities, shall be discharged under section 1141 of the Bankruptcy Code by the confirmation of a Plan of Reorganization, and, except as specified in Paragraph 9 below, the United States shall receive no distributions in the Chapter 11 Cases with respect to such liabilities and obligations, but Reorganized AWI may be required to pay the United States or such other party as it may designate, such amounts as are provided for in this Paragraph and Paragraph 9. Such liabilities and obligations shall be treated and liquidated as General Unsecured Claims on the terms specified herein. If and when the United States undertakes enforcement activities on behalf of EPA in the ordinary course with respect to any Additional Site, the United States may seek a determination of the liability, if any, of AWI and may seek to obtain and liquidate a judgment of liability of AWI or enter into a settlement with AWI with regard to any of the Additional Sites in the manner and before the administrative or judicial tribunal in which the United States' claims on behalf of EPA would have been resolved or adjudicated if the Chapter 11 Case had never been commenced. However, EPA shall not issue or cause to be issued any unilateral order or seek any injunction against AWI under Section 106 of CERCLA, 42 U.S.C. § 9606, or Section 7003 of RCRA, 42 U.S.C. § 6973, arising from the Prepetition acts, omissions or conduct of AWI or its predecessors with respect to any Additional Sites. The United States and AWI will attempt to settle each liability

or obligation asserted on behalf of EPA by the United States against AWI relating to an Additional Site on a basis that is fair and equitable under the circumstances, taking into consideration the liability of third parties at such Additional Sites; however, nothing in this sentence shall create an obligation of the United States or AWI that is subject to judicial review. The aforesaid liquidation of liability may occur notwithstanding the terms of the Plan of Reorganization, the order confirming the Plan of Reorganization, or the terms of any order entered to effectuate the discharge received by AWI. In any action or proceeding with respect to an Additional Site, AWI and the United States reserve any and all rights, claims, and defenses they would have been entitled to assert had the claim been liquidated in the ordinary course or during the course of the Chapter 11 Case. Nothing herein shall be construed to limit the Parties' rights to assert any and all rights, claims and defenses they may have in actions or proceedings involving other parties with respect to Additional Sites.

9. In the event any claim is liquidated pursuant to Paragraph 8 by settlement or judgment to a determined amount (the "Determined Amount"), AWI will satisfy such claim within 30 days after the date on which the settlement or judgment is final and effective (the "Settlement/Judgment Date") by providing the holder of the Claim the "Distribution Amount." The Distribution Amount shall be the value of the consideration which would have been distributed under the Plan of Reorganization to the holder of such Claim if the Determined Amount had been an Allowed General Unsecured Claim in such amount under the Plan of Reorganization. Except as provided in Paragraph 10, the Distribution Amount shall be paid in the same form (e.g., cash, notes, etc.) as was distributed under the Plan of Reorganization.

A. If a Determined Amount is liquidated on or before the first anniversary of the Effective Date of the confirmed Plan of Reorganization or the Final Distribution Date (as such



term is defined in the Plan of Reorganization), whichever is earlier, Reorganized AWI may, in its discretion, elect to pay the Distribution Amount to the United States from the Reorganization Consideration (as such term is defined in the Plan of Reorganization) reserved for distribution, but not yet paid, to holders of General Unsecured Claims (the "Creditors' Reserve"); provided, however, that (i) AWI may only elect this option if it determines that, at the time of such payment, sufficient Reorganization Consideration will exist after payment of the Distribution Amount to provide treatment for the Remaining Disputed Unsecured Claims in the Plan of Reorganization as provided for by the Plan of Reorganization, and (ii) to the extent that sufficient Reorganization Consideration in the Creditors Reserve does not exist to pay the entire Distribution Amount, Reorganized AWI shall pay the United States the difference between the Distribution Amount and the amount of Reorganization Consideration paid from the Creditors' Reserve.

B. If a Determined Amount is liquidated after the first anniversary of the Effective Date of the confirmed Plan of Reorganization or the last Distribution Date under that Plan (whichever is earlier), Reorganized AWI shall not pay any portion of the Distribution Amount from the Creditors' Reserve, but shall remain fully obligated to pay the Distribution Amount to the United States.

10. In the event that the Plan of Reorganization provides that Allowed General Unsecured Claims will receive consideration other than cash, AWI may, in its sole discretion, provide the non-cash portion of the Distribution Amount to the United States in cash that has an aggregate value as of the Settlement/Judgment Date that is equivalent to the Distribution Amount. For purposes of determining the value of the consideration paid to the holders of Allowed General Unsecured Claims at the time of distribution(s), notes shall have a value equal

to their face value and equity securities shall have a value equal to the weighted average of the reported regular way sales prices of all transactions for the security on the New York Stock Exchange on the date(s) of distribution (or the first date thereafter on which the security trades), or if the security is not listed or admitted to trade on such exchange, on the principal national securities exchange on which the security is listed or admitted to trading or, if not listed or admitted to trading on any national securities exchange, the weighted average of the reported bid prices for the security on all transactions on the National Association of Securities Dealers Automated Quotations National Market System or, if the security is not listed or admitted to trading on any national securities exchange or quoted on such National Market System, the weighted average of the reported sales prices for such security on all transactions in the over-the-counter market in the United States as furnished by any New York Stock Exchange member firm selected by AWI and the United States for that purpose. For purposes of determining the number of shares of securities that have the value of the Distribution Amount on the Settlement/Judgment Date, the fair market value per share of securities on the Settlement/Judgment Date shall be determined as set forth in the immediately preceding sentence. The terms of Paragraphs 8, 9 and 10 of this Settlement Agreement shall apply to, be binding on, and inure to the benefit of any successor or assign of AWI to the extent that and only to the extent that the alleged liability of the successor or assign for an Additional Site is based solely on its status as and in its capacity of a successor or assign of AWI.

#### **TREATMENT OF DISCHARGED SITES**

11. With respect to all Discharged Sites, all liabilities and obligations of AWI to EPA, or to the United States on behalf of EPA under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607 and Section 7003 of RCRA, 42 U.S.C. § 6973, arising from Prepetition acts,

omissions, or conduct of AWI or its predecessors, including, without limitation, the Prepetition generation, transportation, disposal or release of hazardous substances, wastes or materials or dangerous wastes or the Prepetition ownership or operation of hazardous waste or hazardous substance sites and/or facilities, shall be discharged under Section 1141 of the Bankruptcy Code by the confirmation of a Plan of Reorganization, and the United States shall not have any Allowed Unsecured Claim or receive any distributions in this Chapter 11 Case with respect to such liabilities and obligations.

### **TREATMENT OF ALLOWED UNSECURED CLAIMS**

12. All Allowed Unsecured Claims under or pursuant to the terms of this Settlement Agreement, including without limitation any such Claims as may eventually be allowed pursuant to Paragraphs 8-10 for Additional Sites, regardless of the identity of the holder of such Claims (i) will receive the same treatment under the Plan of Reorganization, without discrimination, as other Allowed Unsecured Claims with all attendant rights provided by the Bankruptcy Code and other applicable law, and (ii) will not be entitled to any priority in distribution (although the provisions of Paragraph 5(D) shall apply in the event of Excess Insurance Proceeds). In no event shall the General Unsecured Claims allowed or to be allowed pursuant to this Settlement Agreement be subordinated to any other Allowed Unsecured Claims pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of allowed Claims, including without limitation Sections 105, 510 and 726(a)(4) of the Bankruptcy Code.

13. The Claims allowed in this Settlement Agreement do not constitute, nor shall they be construed as, forfeitures, fines or penalties (or payments in lieu thereof), and nothing herein is intended, or shall be construed, as an admission by AWI of any facts (other than the fact of payments made referred to in Paragraph 4) or any violation of law. Notwithstanding the

foregoing, AWI agrees to comply with all terms of this Settlement Agreement upon the Effective Date.

14. Notwithstanding any other provision of this Settlement Agreement, and except as provided under applicable law, there shall be no restrictions on the ability and right of EPA, or the United States on behalf of EPA, to transfer or sell all or a portion of any securities distributed to them pursuant to the Plan of Reorganization; to sell their right to all or a portion of any distributions under the Plan to one or more third parties; or to transfer or sell to one or more third parties all or a portion of any Allowed General Unsecured Claims pursuant to this Settlement Agreement.

15. With respect to all Liquidated Sites, all liabilities and any obligations of AWI to EPA or, to the United States on behalf of EPA, under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607 and Section 7003 of RCRA, 42 U.S.C. § 6973, arising from Prepetition acts, omissions, or conduct of AWI or its predecessors, including, without limitation, the Prepetition generation, transportation, disposal or release of hazardous substances, wastes or materials or dangerous wastes or the Prepetition ownership or operation of hazardous waste or hazardous substance sites and/or facilities, shall be discharged under Section 1141 of the Bankruptcy Code by the confirmation of a Plan of Reorganization and shall be treated as provided in Paragraphs 4, 5, and 12 of this Settlement Agreement.

#### **DISTRIBUTION INSTRUCTIONS**

16. A. Cash distributions for the Liquidated Sites and, if applicable, any Additional Site, to the United States on behalf of EPA shall be made by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures. Payment shall be made in accordance with instructions

provided to AWI by the Financial Litigation Unit of the United States Attorney's Office for the District of Delaware and shall reference Civil Action Number 00-4471 (JKF) and DOJ File Number 90-11-3-07780. AWI shall transmit written confirmation of such payments to the Department of Justice at the address specified in Paragraph 26. In the event that the United States sells or transfers its Claims, AWI will have no obligation to make a payment to a transferee unless AWI has received, prior to the time for making such payment, received written instructions from the United States directing that payments be made to a transferee and instructions as to where such payments should be directed, and, prior to the closing of the Chapter 11 Case, after an evidence of Claim transfer shall have been filed with the Court.

B. Other distributions with respect to the allowed Claims of the United States on behalf of EPA for the Liquidated Sites, and, if applicable, any Additional Site, if such Claim is presented before the Bankruptcy Case is closed, pursuant to this Settlement Agreement shall be made as follows. Non-cash Distributions to the United States on behalf of EPA shall be made to:

U.S. EPA — Superfund  
P.O. Box 371003M  
Pittsburgh, PA 15251

Copies of all distributions and related correspondence to the United States shall be sent to:

Chief, Environmental Enforcement Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044  
Ref. DOJ File No. 90-11-3-07780

Helena Healy  
Attorney-Advisor  
Office of Enforcement and Compliance  
Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W. Mail Code 2272A  
Washington, DC 20460

The United States must notify AWI in writing of any modifications to the foregoing addresses.

In the event that the United States sells or transfers its Claims, distributions will be made to a transferee only at such time as AWI receives written instructions from the United States directing that payments be made to a transferee and instructions as to where such payments should be made, and, prior to the closing of the Chapter 11 Case, after any evidence of Claim transfer shall have been filed with the Court.

C. Distributions received by EPA will either be deposited in site-specific special accounts within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with those sites, or be deposited into the EPA Hazardous Substance Superfund.

#### **COVENANT NOT TO SUE AND RESERVATION OF RIGHTS**

17. In consideration of all of the foregoing, including, without limitation, the payments and/or distributions that will be made and the Claims allowed pursuant to the terms of this Settlement Agreement, and except as specifically provided in Paragraphs 20 through 22 (below), the United States, on behalf of EPA, covenants not to file a civil action or to take any administrative or other action against AWI pursuant to Section 106 or 107 CERCLA, 42 U.S.C. §§ 9606 or 9607, or Section 7003 of RCRA, 42 U.S.C. § 6973, with respect to each of the Liquidated Sites. The covenant not to sue of this Paragraph 17 shall take effect on the Effective Date.

18. This Settlement Agreement in no way impairs the scope and effect of AWI's discharge under Section 1141 of the Bankruptcy Code as to any third parties or as to any Claims that are not addressed by this Settlement Agreement. Also, this Settlement Agreement in no way impairs or limits any covenant not to sue or release that the United States provided to AWI in

any prior settlement agreement, order or consent decree, including, but not limited to, the Malvern Consent Decree.

19. Without in any way limiting the covenant not to sue (and the reservations thereto) set forth in Paragraph 17 and notwithstanding any other provision of this Settlement Agreement, such covenant not to sue shall also apply to AWI's successors and assigns, officers, directors, employees, and trustees, but only to the extent that the alleged liability of the successor or assign, officer, director, employee, or trustee of AWI is based solely on its status as and in its capacity as a successor or assign, officer, director, employee, or trustee of AWI.

20. The covenants not to sue contained in Paragraphs 17 and 19 of this Settlement Agreement extend only to the persons described in Paragraphs 17 and 19 above and do not extend to any other person. Nothing in this Agreement is intended as a covenant not to sue or a release from liability for any person or entity other than AWI, the United States, and the persons described in Paragraph 19. The United States, on behalf of EPA, and AWI expressly reserve all claims, demands and causes of action either judicial or administrative, past, present or future, in law or equity, which EPA, or the United States on behalf of EPA, or AWI may have against all other persons, firms, corporations, entities, or predecessors of AWI for any matter arising at or relating in any manner to the sites or Claims addressed herein.

21. Notwithstanding the foregoing, the covenants not to sue contained in this Settlement Agreement shall not apply to nor affect any action based on (i) a failure to meet a requirement of this Settlement Agreement; (ii) criminal liability; or (iii) matters reserved in Paragraph 7(A) through (D) above.

22. Nothing in this Settlement Agreement shall be deemed to limit the authority of EPA to take response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other

applicable law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by EPA pursuant to that authority. Nothing in this Settlement Agreement shall be deemed to limit the information gathering authority of EPA, or the United States on behalf of EPA under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable federal law or regulation, or to excuse AWI from any disclosure or notification requirements imposed by CERCLA, RCRA, or any other applicable federal or state law or regulation.

23. AWI hereby covenants not to sue and agrees not to assert or pursue any claims or causes of action against the United States with respect to the Liquidated Sites including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substances Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 106(b)(2), 111, 112, 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, 9613, or any other provision of law; any claim against the United States, including any department, agency or instrumentality of the United States, under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613 related to the Liquidated Sites, or any claims arising out of response activities at the Liquidated Sites. Nothing in this Settlement Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

### **CONTRIBUTION PROTECTION**

24. With regard to all existing or future third-party claims (including such Claims as may have been filed by third parties in AWI's Chapter 11 Case against AWI, but not including claims by States acting in their regulatory capacities) with respect to the Liquidated Sites and Consent Decree Site, including claims for contribution, the parties hereto agree that AWI is entitled to



such protection from actions or claims as is provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2). Matters addressed shall include all matters within the scope of the United States' covenant not to sue in Paragraphs 17 and 19 above.

25. AWI agrees that with respect to any suit for contribution brought against it after the Effective Date for matters related to this Settlement Agreement, it will notify the United States within fifteen business days after service of the complaint. In addition, in connection with such suit, AWI shall notify the United States within fifteen business days after service or receipt of any Motion for Summary Judgment and within fifteen business days after receipt of any order from a court setting a case for trial (provided, however, that the failure to notify the United States pursuant to this Paragraph shall not in any way affect the protections afforded under Paragraphs 16 through 23). This notice shall not be required with respect to third-party Claims previously filed in the Chapter 11 Case.

### **NOTICES AND SUBMISSIONS**

26. Whenever, under the terms of this Settlement Agreement, written notice is required to be given, or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below via U.S. mail, unless those individuals or their successors give notice of a change of address to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Except as otherwise provided in this Settlement Agreement, written notice as specified herein shall constitute complete satisfaction of any written notice requirement in the Settlement Agreement with respect to the United States and AWI, respectively.

As to the United States:

Chief, Environmental Enforcement Section  
Environment & Natural Resources Division  
U.S. Department of Justice

P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044  
Ref. DOJ File No. 90-11-3-07780

Helena Healy  
Attorney-Advisor  
Office of Enforcement and Compliance  
Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W. - Mail Code 2272A  
Washington, DC 20460

As to AWI:

Leonard A. Campanaro  
Senior Vice President and Chief Financial Officer  
Armstrong World Industries, Inc.  
P.O. Box 3001  
Lancaster, PA 17604

David B. Hird  
Weil, Gotshal & Manges LLP  
1501 K Street, N.W.  
Washington, D.C. 20005

#### **LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

27. This Settlement Agreement shall be lodged with the Court by the United States for a period of not less than thirty days for public notice and comment. Within 30 days after the conclusion of the public comment period, the United States will notify AWI whether, following its review of the public comments received, the United States continues to consent to this Settlement Agreement and, if the United States so consents, it shall provide to AWI copies of any comments received, as well as the United States' responses to the comments. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is not in the public interest.

28. Upon receipt of notification from the United States, as specified in Paragraph 27, that, following review of public comments, the United States intends to proceed with this Settlement Agreement, the United States and AWI shall promptly file a joint motion with the Bankruptcy Court seeking its approval of this Settlement Agreement under Bankruptcy Rule 9019.

29. If for any reason (i) the Settlement Agreement is withdrawn by the United States as provided in Paragraph 27 or (ii) the Settlement Agreement is not approved by the Court, or (iii) the Chapter 11 Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code before the effective date of a Plan of Reorganization: (a) this Settlement Agreement shall be null and void and the parties shall not be bound hereunder or under any documents executed in connection herewith; (b) the parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith; (c) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value and it shall be as if they had never been executed; and (d) this Settlement Agreement, any statements made in connection with settlement discussions, and any documents prepared in connection herewith may not be used as evidence in any litigation between the parties.

30. AWI shall not propose any Plan of Reorganization or take any other action in the Chapter 11 Case that is inconsistent with the terms and provisions of this Settlement Agreement. The United States, on behalf of EPA, will not oppose any term or provision of a Plan of Reorganization filed by AWI that is addressed by and consistent with this Settlement Agreement. To the extent that there is any inconsistency between the confirmed Plan of Reorganization and this Settlement Agreement, the terms of this Settlement Agreement shall govern as between the

parties. The parties reserve all other rights and defenses they may have with respect to any Plan of Reorganization filed by AWI.

### **AMENDMENTS/INTEGRATION AND COUNTERPARTS**

31. This Settlement Agreement and any other documents to be executed in connection herewith shall constitute the sole and complete agreement of the parties hereto with respect to the matters addressed herein, except that (a) this Settlement Agreement shall not in any way reduce or diminish the effect of any covenant not to sue, release or grant of contribution protection provided to AWI under the terms of any prior consent decree, administrative order on consent or other agreement between the United States and AWI with respect to any of the Liquidated Sites; and (b) this Settlement Agreement shall not in any way alter the rights and obligations of the United States or AWI under the Malvern Consent Decree. This Settlement Agreement may not be amended except by a writing signed by both parties to this Settlement Agreement.

32. This Settlement Agreement may be executed in counterparts each of which shall constitute an original and all of which shall constitute one and the same agreement.

### **RETENTION OF JURISDICTION**

33. Except as provided in Paragraphs 6-10 regarding proceedings in other administrative or judicial tribunals, the Court (or, upon withdrawal of the Court's reference, the U.S. District Court of the District of Delaware) shall retain jurisdiction over the subject matter of this Settlement Agreement and the parties hereto for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the parties to apply to the Court at any time for such further order, direction and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement or to effectuate or enforce compliance with its terms.

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT  
FOR THE UNITED STATES OF AMERICA:

Date: 1.18.05

By: \_\_\_\_\_  
Thomas L. Sansonetti  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

Date: 1/06/05

By: \_\_\_\_\_  
David Street  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Thomas V. Skinner  
Acting Assistant Administrator for  
Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Helena Healy  
Attorney-Advisor  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT

FOR ARMSTRONG WORLD INDUSTRIES, INC.

Date: 12-22-04

By: \_\_\_\_\_

Leonard A. Campanaro  
Senior Vice President and Chief Financial Officer  
Armstrong World Industries, Inc.  
P.O. Box 3001  
Lancaster, PA 17604

Date: 1-05-05

By: \_\_\_\_\_

David B. Hird  
Weil, Gotshal & Manges LLP  
1501 K Street, N.W.  
Washington, D.C. 20005